United Nations A/AC.109/2014/1

General Assembly

Distr.: General
3 February 2014

Original: English

Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Western Sahara

Working paper prepared by the Secretariat

I. Report and good offices of the Secretary-General

1. Pursuant to General Assembly resolution 67/129, the Secretary-General submitted to the Assembly at its sixty-eighth session a report on the question of Western Sahara (A/68/330). The report covered the period from 1 July 2012 to 30 June 2013, and reviewed the activities carried out by the Secretary-General in the exercise of his good offices.

2. Also during the period under review, pursuant to Security Council resolution 2044 (2012), on 8 April 2013, the Secretary-General submitted a report to the Security Council on the situation concerning Western Sahara (S/2013/220).

3. In that resolution, the Security Council, inter alia, called upon all parties to cooperate fully with the operations of the United Nations Mission for the Referendum in Western Sahara (MINURSO), including its free interaction with all interlocutors, and to take the necessary steps to ensure the security of, and unhindered movement and immediate access for, United Nations and associated personnel in carrying out their mandate, in conformity with existing agreements. The Council called upon the parties to continue their discussion of the ideas in paragraph 120 of the report of the Secretary-General (S/2011/249), and requested the Secretary-General to brief the Council on the implementation of the resolution, challenges to MINURSO operations and steps taken to address them. The Council decided to extend the mandate of MINURSO until 30 April 2013.

4. The report of the Secretary-General to the Security Council (S/2013/220) covered developments since 5 April 2012 and described the situation on the ground, the status and progress of the negotiations and the existing challenges to the Mission operations.

5. The Secretary-General informed about recent developments, including largely peaceful demonstrations by Saharan protesters, and reported that the Under-

14-22412 (E) 130214

Please recycle

Secretary-General for Peacekeeping Operations had visited Western Sahara and the refugee camps near Tindouf in October 2012 and his Personal Envoy had visited MINURSO and the region late in October 2012. His Special Representative had visited Algiers in October 2012 and had held consultations with the Algerian authorities and diplomatic representatives of the Group of Friends of Western Sahara. In March 2013, he had met the Mauritanian authorities to discuss issues of mutual concern. Several human rights organizations had visited the territory, including the Robert F. Kennedy Centre for Justice and Human Rights and the Leadership Council for Human Rights. Also in September 2012, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had visited the Territory west of the berm, at the invitation of the Government of Morocco. Late in September 2012, a delegation from the African Commission on Human and Peoples' Rights had visited the refugee camps near Tindouf, but had not been able to visit Western Sahara itself. In March 2013, the Moroccan authorities had denied access to a delegation of members of the European Parliament travelling in their private capacity.

6. On 17 February 2013, the Permanent Military Tribunal of the Royal Armed Forces in Rabat had pronounced its verdict in the trial of 25 Saharan civilians in relation to violence during and after the dismantling of the Gdim Izik protest camp near Laayoune in November 2010 (see paras. 19, 20 and 21). In December 2012, the President of the Moroccan Economic, Social and Environmental Council had published a preliminary and critical assessment of the current development model of the Territory, including governance and issues of transparency and accountability, in addition to human rights.

7. With regard to the activities of his Personal Envoy, the Secretary-General informed that the period from March 2012 to March 2013 had been marked by a four-month pause in the mediation process and by serious unrest in the Sahel region and beyond. His Personal Envoy had resumed his mediation activities with a trip to the region in October and November 2012, during which he had visited Western Sahara for the first time. He had also visited the capitals of the Group of Friends of Western Sahara, in addition to those of Germany and Switzerland.

8. The Secretary-General informed that from 27 October to 15 November 2012 his Personal Envoy had undertaken regional consultations followed by visits to Madrid and Paris for bilateral discussions with the newly elected Governments. His Personal Envoy had sought to widen his contacts beyond official interlocutors to include civil society leaders, clarify his mandate and highlight his neutrality. By the end of the consultations in the region, his Personal Envoy had obtained confirmation of the willingness of both parties and the neighbouring States to continue to remain engaged in the negotiating process led by the United Nations, including through shuttle diplomacy in the region. It had been agreed with the parties and the neighbouring States that convening yet another round of informal talks in the immediate future would not advance the negotiating process, given that the parties remained strongly attached to their respective proposals and had yet to discuss possible compromises.

9. The Secretary-General reported that his Personal Envoy had undertaken a trip to the capitals of the Group of Friends of Western Sahara from 28 January to 15 February 2013, as well as to Berlin, Bern and Geneva. His Personal Envoy had engaged his interlocutors in a discussion on options for yet another approach to

move the negotiating process beyond the current stalemate and improve the atmosphere for negotiations.

10. With regard to the negotiating process, his Personal Envoy had put forward three modest ideas to be put to the parties and the neighbouring States during a visit to the region in March and April 2013. He had also presented three additional ideas with regard to the atmosphere surrounding the negotiation process. The Secretary-General indicated that his Personal Envoy had found unanimous support for both sets of ideas.

11. The Secretary-General also informed that, as agreed with the parties and the neighbouring States, his Personal Envoy had undertaken a second visit to the region during the latter half of March 2013 and early in April and that the results of the visit would be described orally to the Security Council.

12. With regard to the activities on the ground, the Secretary-General reported that MINURSO had maintained good relations and communications with the Royal Moroccan Army and with Frente Polisario para la Liberación de Saguia el-Hamra y de Rio de Oro, notwithstanding the divergences of opinion that remain between the Mission and each party regarding compliance with military agreement No. 1, in particular concerning the status of longstanding violations. MINURSO had observed and recorded 42 general violations of military agreement No. 1 by the Royal Moroccan Army, compared with 25 recorded during the previous reporting period. Four general violations by the Frente Polisario military forces had been confirmed compared with seven confirmed during the previous reporting period. The Secretary-General noted that the general assessment of MINURSO was that the aforementioned violations by both parties had not jeopardized the ceasefire. Further, the Secretary-General noted that with the increase in monitoring challenges related to the growth in military dispositions west of the berm in response to regional threats, the MINURSO military component needed to be strengthened in order to perform effectively.

13. On mine action, the Secretary-General informed the Security Council that widespread contamination caused by landmines and explosive remnants of war throughout Western Sahara continued to endanger the lives of the local population, MINURSO military observers and logistical teams. MINURSO had continued to take steps to ensure the safety of United Nations personnel with the support of the Mine Action Coordination Centre of the Mission. During the reporting period, demining teams had destroyed 401 items, including cluster bomb units, unexploded ordnance and anti-tank and anti-personnel mines. The extent of landmines and explosive remnants of war to the west of the berm remained unknown. Effective cooperation had also continued between the Mine Action Coordination Centre and both the Royal Moroccan Army and Frente Polisario. The Centre began to meet both parties on a quarterly basis to discuss information-sharing, demining methodologies, mine risk education and victim assistance interventions.

14. On safety and security, the Secretary-General informed the Council that the three humanitarian aid workers kidnapped in October 2011 had been released in July 2012 and that nonetheless concerns about kidnapping remained high.

15. With regard to humanitarian activities, the Office of the United Nations High Commissioner for Refugees (UNHCR) had enhanced its protection presence and monitoring in the refugee camps near Tindouf. UNHCR, the World Food

Programme, the World Health Organization and the United Nations Children's Fund (UNICEF) had continued to provide material assistance to refugees in the camps. UNICEF had also strengthened its operational capacity, improved coordination with other United Nations entities and enhanced participation in joint assessments of HIV/AIDS, water, sanitation and hygiene and other programmes.

16. On confidence-building measures, the Secretary-General informed the Security Council that with the cooperation of Morocco and Frente Polisario, UNHCR had continued to implement the confidence-building measures programme. Family visits and cultural seminars remained the two fundamental components of the updated plan of action for confidence-building measures, as agreed with the parties in February 2013. The Secretary-General informed that UNHCR had chaired two meetings in Geneva in 2012 to review the confidence-building measures programme.

17. With regard to the programme of family visits, the Secretary-General informed that the twice monthly exchange visits remained the best way of keeping families connected and that, in order to increase the number of persons benefiting from the programme, UNHCR had leased a larger aircraft, which had tripled the number of beneficiaries and increased the number of locations for the visits.

18. On human rights, the Secretary-General informed the Security Council that during the reporting period, human rights violations affecting Western Sahara in both the Territory and the refugee camps near Tindouf continued to be alleged or reported. With regard to the Territory, they related in particular to violations of the right to a fair trial, torture, cruel, inhuman and degrading treatment, and freedom of expression, association and assembly.

19. In relation to the military trial of 25 Saharan civilians (see para. 6), the Moroccan authorities and some international observers had acknowledged positively the proceedings and outcome of the trial. In contrast, other local and international non-governmental human rights organizations had criticized breaches of international fair trial standards.

20. The Secretary-General informed the Security Council that he shared the concerns that had been expressed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on torture about the use of a military court to try civilians and the failure to investigate allegations of torture and ill treatment, including sexual violence, during the prisoners' pre-trial detention. The Moroccan authorities had informed the High Commissioner that the jurisdiction of the court was legal and complied with the provisions of international law.

21. The Secretary-General noted that while the accused had appealed against the verdict, it was also of concern that the appeal can be made only to the Court of Cassation, which does not allow for a complete review of all aspects of the case. In that regard, King Mohammed VI had recently endorsed the recommendation of the Moroccan National Human Rights Council that civilians should not be prosecuted in a military court. In addition, on 12 February 2013, the Chamber of Representatives had adopted accession legislation for the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

22. The cases of more than 100 Saharans accused of acts of violence in relation to the dismantling of the Gdim Izik camp remained pending before the Laayoune Court

of Appeal. An investigation into allegations of torture and ill treatment reportedly had not been opened. The Special Rapporteur on the situation of human rights defenders had also expressed concern at alleged restrictions on the right of peaceful assembly and on registration of Saharan non-governmental organizations.

23. The Secretary-General also informed that international organizations and United Nations independent experts had been able to visit the Territory. They had, however, reported some constraints while conducting their work; notably, the monitoring by local authorities of meetings and the climate of intimidation that had been created for some interlocutors. Local human rights organizations had regularly reported beatings of demonstrators by Moroccan security forces, including during the visit of the Personal Envoy. In relation to the work of international human rights mechanisms, the Moroccan authorities had facilitated the access of United Nations special procedures mandate holders to the Territory when requested to do so in the context of visits to Morocco.

24. The Secretary-General also informed that the Special Rapporteur on torture had visited Laayoune in September 2012 for two days and had focused on his specific mandate. On 4 March 2013, he had submitted his report to the Human Rights Council, in which he had recommended that the Government of Morocco should promptly conduct impartial and independent investigations of allegations of torture, hold perpetrators accountable, provide compensation to victims, reconsider the jurisdiction of military courts over civilians and further strengthen protection for internationally recognized human rights.

25. The Human Rights Council had adopted in September 2012 the outcome of the universal periodic review of Morocco, including five recommendations relating to the human rights situation in Western Sahara. Three recommendations pertaining to the protection of human rights defenders had enjoyed the support of the Government of Morocco, which considered that they had already been implemented or were being implemented. Morocco had rejected the recommendation that it accept the establishment of a permanent human rights component in MINURSO, arguing that it did not fall within the scope of the mandate of the Human Rights Council.

26. Information regarding the human rights situation in the refugee camps near Tindouf remained limited. In recent years, allegations of violations had been reported, notably violations of the rights to freedom of expression and movement. From 24 to 28 September 2012, the African Commission on Human and Peoples' Rights had undertaken a fact-finding mission, sanctioned by the Assembly of the African Union, to evaluate human rights in the Territory and the refugee camps near Tindouf. The Moroccan authorities had not responded to the mission request to visit the Territory, but its members had visited the refugee camps. In a press release, they had cited information relating to alleged violations committed in the Territory, but had provided no information on alleged violations in the camps.

27. Pursuant to Security Council resolution 2044 (2012), the Secretary-General examined the existing challenges to MINURSO operations, and the steps taken to address them.

28. With regard to its mandate, the Secretary-General informed that there had been no change in the challenges that MINURSO was facing. The parties had developed significantly different interpretations of the mandate. Morocco defined MINURSO as a mainly military peacekeeping operation active for the most part along the berm,

while Frente Polisario expected MINURSO to monitor the welfare and human rights of the population throughout the Territory. Those differing views had continued to define the operational environment and had resulted in frustration and criticism from both sides. One side asserted that MINURSO was seeking to do too much, and the other that it was doing too little. Challenges relating to the security situation in the Mission area of responsibility also had not decreased during the reporting period. The security of MINURSO personnel was a growing concern.

29. The Mission's monitoring and reporting of violations of military agreement No. 1 had continued to suffer from challenges reflecting a general absence of precise ceasefire terms and the Mission's lack of authority to prevent or rectify non-compliance. The Mission efforts to clarify to the parties its reading of the text notwithstanding, varying interpretations of the agreement continued on the basis of differing readings of its specific provisions. Morocco had suggested some specific changes to military agreement No. 1, and Frente Polisario has also indicated that it viewed some provisions as being in need of review. MINURSO would continue to seek common ground for mutually agreed revisions of the agreement.

30. The Secretary-General informed that differing interpretations of the mandate remained a challenge to MINURSO substantive civilian activities. The Mission meetings with interlocutors and political reporting were conducted within the limits set by the differing understanding of the nature of the Mission. The Mission remained limited in its ability to provide truly independent reporting on developments to the Council and the Secretariat.

31. In his observations and recommendations, the Secretary-General pointed out that during the reporting period, difficulties had continued to hinder progress towards a just, lasting and mutually acceptable political solution, which would provide for the self-determination of the people of Western Sahara. In 2012, only one round of direct talks had been held under the mediation of his Personal Envoy. By the end of the reporting period, the negotiating process remained at a stalemate because the two parties had refused to move beyond presenting and defending their respective proposals.

32. The Secretary-General noted that the rise of instability and insecurity in and around the Sahel region required an urgent settlement of the Western Sahara conflict, urged the parties to engage in genuine negotiations with the assistance of his Personal Envoy and informed that his Personal Envoy would continue to encourage further improvement in relations between Morocco and Algeria. He also expressed his belief that people-to-people dialogue could help bridge the gap between Western Saharans, bring their needs and desires more to the fore and contribute positively to the negotiating environment.

33. The Secretary-General stressed the critical importance of addressing the Western Sahara conflict as part of a broader strategy for the Sahel region. He further noted his conviction that regional integration, particularly through reinforcement of the Arab Maghreb Union, was a key element in overcoming the current instability and reaping important economic, commercial and social benefits.

34. The Secretary-General noted that the issue of human rights remained important for any resolution of the conflict and that all parties were responsible for ensuring the protection of human rights, and he urged them to pay more attention to the issues being raised and promote a culture of human rights.

35. The Secretary-General noted that new challenges now require an equal measure of increased monitoring by MINURSO military observers. He reiterated his call to the parties to establish direct cooperation and communication through a joint military verification mechanism to discuss allegations of violations and other issues of common interest.

36. With regard to the confidence-building measures programme, the Secretary-General pointed out that the exchange visits remained the best way of keeping families connected, and also noted the successful inter-Saharan cultural seminars and the parties' commitment to continue constructive cooperation with UNHCR in order to alleviate the divisive effects of the conflict.

37. The Secretary-General welcomed the continued progress made in the clearance of land mines and explosive ordnances of war, commended the constructive discussions held by each party with the United Nations Mine Action Service on the implementation of international mine action standards on both sides of the berm and called upon donors to support the efforts towards demining in Western Sahara.

38. The Secretary-General also noted that MINURSO had maintained its ceasefire monitoring function and that its presence on the ground had played an important role in deterring the parties from breaking the ceasefire agreement or resuming hostilities. It had made good progress in demining and clearing vast areas of the Territory, and had effectively facilitated the family visits programme under UNHCR auspices.

39. The Secretary-General believed that the presence of MINURSO remained relevant (a) as an instrument of stability in the event that the political stalemate continues; (b) as a mechanism to support the implementation of successive Security Council resolutions related to the mandate of MINURSO; and (c) to provide independent information on the conditions on the ground to the Security Council, the Secretariat and the international community. He therefore sought the assistance of the Council in reasserting the mandated role of MINURSO, upholding peacekeeping standards and United Nations neutrality and ensuring that the conditions for the successful operation of the Mission were met. He also called on both parties, Morocco and the Frente Polisario, to cooperate fully with MINURSO in achieving these objectives. In this context, and in the light of the continuing efforts of his Personal Envoy, he recommended that the Council extend the mandate of MINURSO, with a modest increase of 15 military observers and 6 United Nations police officers to the authorized strength, for a further 12 months, until 30 April 2014.

II. Consideration by the Security Council

40. Following consideration of the report of the Secretary-General on the situation concerning Western Sahara (S/2013/220), on 25 April 2013, the Security Council unanimously adopted resolution 2099 (2013), by which, among other things, it reaffirmed the need for full respect of the military agreements, called upon all parties to cooperate fully with the operations of MINURSO and to ensure the security of, as well as unhindered and immediate access for, United Nations and associated personnel in carrying out their mandate, called upon the parties to continue to show political will and work in an atmosphere propitious for dialogue in order to enter into a more intensive and substantive phase of negotiations, and to

continue negotiations under the auspices of the Secretary-General without preconditions and in good faith, with a view to achieving a just, lasting and mutually acceptable political solution that would provide for the self-determination of the people of Western Sahara, in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations, and noted the role and responsibilities of the parties in that respect. The Council decided to extend the mandate of MINURSO until 30 April 2014.

III. Consideration by the General Assembly

41. During the general debate of the General Assembly at its sixty-eighth session, a number of representatives referred to the question of Western Sahara in their statements. During the debate from 8 to 10 October 2013, the Special Political and Decolonization Committee (Fourth Committee) heard statements by 71 petitioners on the question of Western Sahara (see A/C.4/68/SR.4, 5 and 6). On 10, 11 and 14 October 2013, Member States addressed, among other things, the issue of Western Sahara. Some of them strongly supported the right of the Saharawi people to self-determination, reaffirmed their support for the relevant Assembly and Security Council resolutions, and the efforts of the Secretary-General and his Personal Envoy for Western Sahara, and stressed the importance of expanding the mandate of MINURSO to include a human rights component. Others believed that the autonomy plan by Morocco offered a realistic and viable option that could provide the best prospect for achieving a mutually acceptable solution to the question (see A/C.4/68/SR.6, 7 and 8).

42. At its 8th meeting, on 14 October 2013, the Committee approved without a vote the draft resolution entitled "Question of Western Sahara" (A/C.4/68/L.5), submitted by the Chair.

43. On 11 December 2013, the General Assembly adopted the draft resolution without a vote, as resolution 68/91. In that resolution, the Assembly, among other things, welcomed the commitment of the parties to continuing to show political will and working in an atmosphere propitious to dialogue; welcomed the ongoing negotiations between the parties; called upon the parties to cooperate with the International Committee of the Red Cross, and called upon them to abide by their obligations under international humanitarian law; requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to consider the situation in Western Sahara and to report thereon to the Assembly at its sixty-ninth session; and invited the Secretary-General to submit to the Assembly at its sixty-ninth session a report on the implementation of the resolution.